

1 WRIGHT, FINLAY & ZAK, LLP
2 Dana Jonathon Nitz, Esq.
3 Nevada Bar No. 0050
4 Christina V. Miller, Esq.
5 Nevada Bar No. 12448
6 Regina A. Habermas, Esq.
7 Nevada Bar No. 8481
8 7785 W. Sahara Ave., Suite 200
9 Las Vegas, NV 89117
10 (702) 475-7964; Fax: (702) 946-1345
11 dnitz@wrightlegal.net
12 cmiller@wrightlegal.net
13 rhbermas@wrightlegal.net

*Attorneys for Plaintiff, Christiana Trust, a division of Wilmington Savings Fund Society, FSB,
not in its individual but as Trustee of ARLP Trust3*

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEVADA**

12 CHRISTIANA TRUST, A DIVISION OF
13 WILMINGTON SAVINGS FUND SOCIETY,
14 FSB, NOT IN ITS INDIVIDUAL CAPACITY
15 BUT AS TRUSTEE OF ARLP TRUST 3,

16 Plaintiff,

17 vs.

18 PANORAMA TOWERS CONDOMINIUM
19 UNIT OWNERS' ASSOCIATION, a Nevada
20 Non-Profit Corporation,

21 Defendant.

Case No.: 2:17-cv-02235-JCM-CWH

**MOTION TO ENLARGE TIME TO
SERVE DEFENDANT PANORAMA
TOWERS CONDOMINIUM UNIT
OWNERS' ASSOCIATION WITH
SUMMONS AND COMPLAINT**

22 Pursuant to Fed. R. Civ. P. 4(m), Plaintiff, Christiana Trust, a division of Wilmington
23 Savings Fund Society, FSB, not in its individual but as Trustee of ARLP Trust3 ("Christiana
24 Trust"), by and through its attorneys of record, Dana Jonathon Nitz, Esq., Christina V. Miller,
25 Esq., , and Regina A. Habermas, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby
26 moves the Court to enlarge the time to serve Defendant, Panorama Towers Condominium Unit
27 Owners' Association (the "HOA") with the Summons and Complaint by, at least, an additional
28 45 days.

1 This Motion is based on the attached memorandum of law, all pleadings and papers on
2 file, and any oral argument as permitted by the Court. Since Christiana Trust has not yet served
3 the Complaint on the named defendant, Christiana Trust anticipates the Motion will necessarily
4 remain unopposed.

5 DATED this 21st day of November, 2017.

6 WRIGHT, FINLAY & ZAK, LLP

7 /s/ Regina A. Habermas, Esq.

8 Dana Jonathon Nitz, Esq.

9 Nevada Bar No. 00050

Christina V. Miller, Esq.

10 Nevada Bar No. 12448

Regina A. Habermas, Esq.

11 Nevada Bar No. 8481

7785 W. Sahara Ave., Suite 200

Las Vegas, NV, 89117

12 *Attorneys for Plaintiff, Christiana Trust, a division*
13 *of Wilmington Savings Fund Society, FSB, not in its*
14 *individual but as Trustee of ARLP Trust³*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 This action arises out of a non-judicial foreclosure sale of the real property located at
18 4575 Dean Martin Drive, Unit 1500, Las Vegas, Nevada 89103 (the "Property") conducted by
19 the HOA (the "HOA Sale"). Christiana Trust seeks an award of damages resulting from the
20 failure of the HOA and its foreclosure trustee to conduct the HOA Sale in compliance with
21 applicable law. Christiana Trust respectfully requests the Court enter an Order enlarging the
22 time to serve the Summons and Complaint on the HOA pursuant to Fed. R. Civ. P. 4(m) and
23 6(b). This Court has broad discretion to enlarge the time for service. In re Sheehan, 253 F.3d
24 507, 513 (9th Cir. 2001). Thus, the Court may enlarge the period of time within which a
25 Summons and Complaint is to be served even where a party fails to demonstrate good cause for
26 failure to serve within 90 days. Id. Christiana Trust submits that good cause exists to extend the
27 deadline because the failure to effect service on the HOA within the prescribed period resulted
28 from a desire to conserve the resources of the Court and the parties to this action. If the Court

1 does not find good cause exists in these circumstances, Christiana Trust submits the failure to
2 serve the HOA was the result of excusable neglect and the Court should exercise its discretion to
3 grant the requested extension.

4 **II. PROCEDURAL HISTORY**

5 ***This Action for Damages***

6 On August 22, 2017, Christiana Trust filed its Complaint against the HOA. [ECF No. 1].
7 On August 29, 2017, Christiana Trust submitted its Proposed Summons to the HOA. [ECF
8 No. 2]. The Summons was issued by the Court the same day. [ECF No. 4]. Also on August 29,
9 2017, Christiana Trust filed a Notice of Lis Pendens. [ECF No. 3]. Finally, on September 7,
10 2017, Christiana Trust filed its Certificate of Interested Parties [ECF No. 5].

11 ***State Court Title Dispute***

12 On October 12, 2015, Christiana Trust filed a Complaint for Quiet Title and Declaratory
13 Relief against the buyer at the HOA Sale, SFR Investments Pool 1, LLC (“SFR”) in the Eighth
14 Judicial District Court, in and for the State of Nevada, Case No. A-15- 726031-C (the “Quiet
15 Title Action”).¹ The pleadings closed on April 4, 2016, when Christiana Trust filed its Answer
16 to SFR’s Counterclaim.² After the close of discovery in the Quiet Title Action, the parties filed
17 competing Motions for Summary Judgment.³ The dispositive motions were fully briefed and the
18 Court scheduled a hearing of them on October 24, 2017.⁴ Christiana Trust expected the Court to
19 rule on the competing motions and resolve the title dispute during that hearing.⁵ However, the
20 Court continued the hearing to December 7, 2017 and has not yet ruled on the dispositive
21 motions.⁶

22 Had the Court granted Christiana Trust’s Motion for Summary Judgment in the Quiet
23 Title Action, the claims asserted against the HOA here would likely be rendered moot and
24

25 ¹ See Declaration of Regina A. Habermas, Esq., attached hereto as **Exhibit 1**, at ¶ 6.

26 ² *Id.* at ¶ 7.

27 ³ *Id.* at ¶ 8.

28 ⁴ *Id.* at ¶ 9.

⁵ *Id.* at ¶ 10.

⁶ *Id.* at ¶ 11.

1 Christiana Trust could decide not to litigate those claims.⁷ Thus, the anticipated October 24,
2 2017 ruling was potentially dispositive of the issues raised in this action.⁸ Under those
3 circumstances, Christiana Trust determined the Court's and parties' resources could be preserved
4 if the Summons and Complaint were not served on the HOA until after the October 24, 2017
5 hearing.⁹ As noted above, the dispositive motion hearing in the Quiet Title Action was
6 continued to a date after the November 20, 2017 deadline to serve the HOA in this case.¹⁰ As the
7 result of mistake or inadvertence, the Summons and Complaint were not served on the HOA
8 prior to that deadline.¹¹

9 III. LEGAL ARGUMENT

10 Pursuant to Fed. R. Civ. P. 4(m),

11 If a defendant is not served within 90 days after the complaint is filed, the court—
12 on motion or on its own after notice to the plaintiff—must dismiss the action
13 without prejudice against that defendant or order that service be made within a
14 specified time. But if the plaintiff shows good cause for the failure, the court must
15 extend the time for service for an appropriate period. This subdivision (m) does
not apply to service in a foreign country under Rule 4(f) or 4(j)(1) or to service of
a notice under Rule 71.1(d)(3)(A).

16 Thus, Rule 4(m) provides two avenues for relief. Lemoge v. United States, 587 F.3d
17 1188, 1198 (9th Cir. 2009). The first is mandatory: the district court must extend time for
18 service upon a showing of good cause for failure to serve within 90 days. Id. The second is
19 discretionary: if the serving party does not show good cause, the Court has discretion to extend
20 time for service, or to dismiss the complaint without prejudice. In re Sheehan, 253 F.3d 507, 513
21 (9th Cir. 2001). The Court's discretion to extend time for service, or to dismiss without
22 prejudice for failure to timely serve, is broad. Id. The Court may extend time for service even
23 after the 90-day period expires. Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir. 2007).

24 Here, the Court should exercise its discretion to extend the time for service and grant
25

26 ⁷ Id. at ¶ 12.

27 ⁸ Id. at ¶ 13.

28 ⁹ Id. at ¶ 14.

¹⁰ Id. at ¶ 15.

¹¹ Id. at ¶ 16.

1 Christiana Trust an additional 45 days to effectuate service on the Summons and Complaint upon
2 the HOA. Christiana Trust anticipated, in good faith, that a ruling during the October 24, 2017
3 hearing in the Quiet Title Action could be dispositive of both the Quiet Title Action and this
4 action. When the Court continued the hearing to December 7, 2017, Christiana Trust should
5 have proceeded to effect service on the HOA in this action. However, Christiana Trust
6 inadvertently failed to do so. Christiana Trust has shown good cause for the delay due to desire
7 to conserve the time and resources of the Court as well as the parties to this action. At the very
8 least, the failure to serve the HOA by the deadline to do so resulted from excusable neglect. And
9 this Motion is being filed only one day after the expiration of the period for service. Finally, a
10 brief 45-day extension of the deadline to serve the Summons and Complaint will not result in
11 undue prejudice to the HOA.

12 **IV. CONCLUSION**

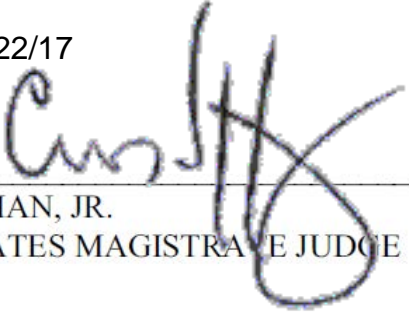
13 Based on the foregoing, Christiana Trust respectfully requests an Order from the Court
14 granting an additional 45 days to effectuate service of the Summons and Complaint upon
15 Defendant HOA.

16 DATED this 21st day of November, 2017.

WRIGHT, FINLAY & ZAK, LLP

18 IT IS SO ORDERED.

19 DATED: 11/22/17

20
21 
22 C.W. HOFFMAN, JR.
23 UNITED STATES MAGISTRATE JUDGE

/s/ Regina A. Habermas, Esq.

Regina A. Habermas, Esq.

Nevada Bar No. 8481

7785 W. Sahara Ave, Suite 200

Las Vegas, Nevada 89117

*Attorneys for Christiana Trust, a division of
Wilmington Savings Fund Society, FSB, not
in its individual capacity but as Trustee of
ARLP Trust 3*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dana Jonathon Nitz, Esq. dnitz@wrightlegal.net
Christina V. Miller, Esq. cmiller@wrightlegal.net

Page 6 of 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION
1	Declaration of Regina A. Habermas, Esq.